

SERVED: June 24, 1993

NTSB Order No. EA-3915

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 10th day of June, 1993

_____)	
JOSEPH M. DEL BALZO,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-11269
v.)	
)	
JACK W. KASPER,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

The Administrator and the respondent both have appealed from the written initial decision of Administrative Law Judge Jerrell R. Davis, served on April 2, 1991, following an evidentiary hearing held on March 15, 1991.¹ The Administrator suspended respondent's airline transport pilot (ATP) certificate for, among

¹The written initial decision is attached. Although both parties filed appeal briefs, only the Administrator filed a reply brief.

other things, operating a Piper PA-31T, N234K, without 1) an original registration certificate; 2) current weight and balance data; 3) the required flight manual, as well as certain log book entries and forms; and 4) a current emergency locator transmitter (ELT) battery,² in violation of sections 91.165, 91.167(a)(1) and (2), 91.29(a), 91.27(a)(2), 91.52(a) and (d)(2), and 91.31(b)(1) of the Federal Aviation Regulations ("FAR," 14 C.F.R. Part 91).³

²A complete list of the alleged discrepancies is included in the law judge's decision.

³Sections 91.27, 91.29, 91.165, and 91.167 (now 91.203, 91.7, 91.405, and 91.407) read, in pertinent part:

§ 91.27 Civil aircraft: Certifications required.

(a) Except as provided in § 91.28, no person may operate a civil aircraft unless it has within it the following:

* * * *

(2) A registration certificate issued to its owner.

§ 91.29 Civil aircraft airworthiness.

(a) No person may operate a civil aircraft unless it is in an airworthy condition.

§ 91.165 Maintenance required.

Each owner or operator of an aircraft shall have that aircraft inspected as prescribed ... and shall, between required inspections, have discrepancies repaired as prescribed in Part 43 of this chapter. In addition, each owner or operator shall ensure that maintenance personnel make appropriate entries in the aircraft maintenance records indicating that the aircraft has been approved for return to service.

§ 91.167 Operation after maintenance, preventive maintenance, rebuilding, or alteration.

(a) No person may operate any aircraft that has undergone maintenance, preventive maintenance, rebuilding, or alteration unless -

(1) It has been approved for return to service by a person authorized under § 43.7 of this chapter; and

(2) The maintenance record entry required by § 43.9 or § 43.11, as applicable, of this chapter has been made.

These alleged discrepancies were discovered on July 29, 1988, during an inspection requested by Santiam Air, the owner of N234K and respondent's employer, to upgrade the aircraft for Part 135 (14 C.F.R. Part 135) operation.

After consideration of all the evidence, the law judge affirmed the charges, except those relating to sections 91.29(a), 91.52(a), and 91.52(d)(2). Categorizing most of the infractions as recordkeeping errors, he reduced the suspension period to 15 days.⁴

Respondent asserts that no sanction should be imposed because any errors in recordkeeping that occurred did not impact aviation safety. By contrast, the Administrator maintains that the substantial reduction in sanction approved by the law judge is not in accordance with precedent and policy. The Administrator further argues that respondent's act of operating the aircraft without having a valid registration on board after being warned by an FAA inspector that the aircraft could not be flown again without one evidences a lax attitude toward

(..continued)

The Administrator also alleged that respondent violated: 1) section 91.52(a) and (d)(2) by failing to replace or recharge the battery used in the ELT when 50 percent of its useful life has expired; and 2) section 91.31(b)(1) by operating the aircraft without having available an approved flight manual.

⁴The law judge found that the airworthiness of the aircraft was not compromised and respondent's actions, at most, "reflected belated record-keeping" or a "paperwork deficiency." He granted respondent's motion to strike the discrepancies pertaining to Part 135 operations only, reasoning that even though respondent was in the process of upgrading the aircraft and manual to meet the standards of Part 135, the aircraft had never been operated under Part 135. The Administrator did not appeal this ruling.

compliance with the FARs and, as such, merits a tougher sanction.

For the reasons that follow, we will grant the Administrator's appeal.

In his appeal, respondent contends primarily that the sanction imposed is not justified. Although he attempts to defend against each allegation (even those that were not affirmed by the law judge), respondent has not illustrated that the law judge erred in concluding that a preponderance of the reliable, probative, and substantial evidence supports his factual findings.⁵ According to respondent, because the violations are rooted in what appears to be faulty record keeping, suspending his certificate "does not further the goal that the governing

⁵The law judge found that:

1. An approved manual was not in the aircraft, contrary to the requirement of § 91.31(b)(1). This determination was based on a credibility assessment, choosing the FAA inspector's account of events over respondent's.
2. At the time of the inspection, the required log book entries for
 - a) new seat belts;
 - b) altimeter and transponder testing; as well as
 - c) new exterior paint and new interiorhad not been made.
3. There were no 337 forms for the installation of new brakes and new Loran.
4. There was no original registration in the aircraft.
5. There was insufficient evidence to determine whether the ELT battery was out of date.
6. Even though the weight and balance information was in his weight and balance computer on board the aircraft, the current weight and balance report and the official flight manual were at the maintenance facility. These discrepancies, however, were of a "bookkeeping nature."

legislation was intended to accomplish, and is not required to insure prevention of future violations." Respondent's appeal brief at 10. He claims that the suspension is contrary to the Administrator's stated commitment to a "kinder, gentler" policy.

This argument must fail, as the Board is not empowered to evaluate the Administrator's enforcement policy. ConnAire v. Secretary, U.S. Dept. of Transp., 887 F.2d 723 (6th Cir. 1989).

Turning to the Administrator's appeal, we find his argument more persuasive, in that while most of the various discrepancies may have been recordkeeping errors, respondent's defiant act of operating the aircraft without a valid registration certificate after being advised that to do so would result in a violation of the FARs illustrates an unacceptably cavalier attitude toward compliance with the regulations.⁶ At first glance this

⁶During the inspection of N234K on July 29, 1988, when asked for the original aircraft registration certificate, respondent told the FAA inspector that he did not have it and that it was probably back at his office. Transcript (Tr.) at 117. The inspector testified that he issued respondent a ferry permit to transport the aircraft back to the maintenance facility for the purpose of remedying the various discovered discrepancies, but that he told respondent three times that the aircraft could not be operated without a valid registration. Tr. at 138, 151. The inspector advised respondent that he must contact the FAA in Oklahoma City and request a temporary registration to be sent via telegram, prior to any further flight.

The inspector testified that after giving respondent the ferry permit, he went to lunch. When he returned, the aircraft was gone. He concluded that respondent flew the aircraft to the maintenance facility. Tr. at 158-59. Although the hearing transcript reflects that no one asked respondent whether he did, in fact, operate the aircraft after the inspection, no evidence was introduced to refute the inspector's statement.

Admitted into evidence was a confirmation copy of a telegram dated August 22, 1988, containing a temporary registration for N234K. Respondent's Exhibit 1.

violation, as well as the other recordkeeping infractions, appear to be purely technical. When a violation is technical in nature, non-operational, and does not represent a safety hazard, the imposition of a sanction may not be required in the interest of aviation safety. Administrator v. Wright, 5 NTSB 931, 935 (1986) (a balloon operator's technical violation of § 91.27(a)(2) did not result in a compromise of air safety; as a result, no sanction was imposed). But technical violations are more serious when an airman deliberately disregards a warning that any further operation of the aircraft would be contrary to the FARs. See, e.g., Administrator v. Brothers, NTSB Order No. EA-2968 (1989), where such action by the respondent was deemed to "reflect[] contempt for the FAA's regulatory scheme." Id. at 14.

When considered with all the facts, it is apparent that respondent's decision to ignore the FAR registration requirements concerns air safety.⁷ See Administrator v. Kowal, 5 NTSB 387 (1985) (respondent received a 120-day suspension when he operated an aircraft two times after being advised by an FAA inspector that further operation without displaying proper registration markings would be unlawful).⁸

⁷The circumstances of the instant case can be distinguished from those of another case involving respondent, SE-11268, recently decided by the Board wherein respondent was charged with operating an aircraft that did not display the proper identifying markings. The aircraft was a composite of parts from two aircraft (both of which were registered to Santiam Air) that had been combined to create one whole aircraft. Identification of the aircraft's owner was not an issue.

⁸In Kowal, the respondent also argued that his conduct did not affect air safety. We disagreed, stating that

Regarding sanction, the Administrator originally sought a 120-day suspension. On appeal, he argues that the law judge's "significant reduction" of the sanction is not justified. The standard set forth in Administrator v. Muzquiz, 2 NTSB 1474 (1975) requires clear and compelling reasons to be identified in support of a reduction in sanction by the law judge. We are not satisfied that this burden was met. Nevertheless, some reduction is in order since the law judge dismissed the charges under sections 91.29(a) and 91.52(a) and (d)(2). Taking into account the circumstances of this case, Board precedent, and respondent's violation history,⁹ it appears that a 90-day suspension is warranted.

(..continued)

[a]n airman's compliance disposition directly bears on his qualifications because pilots who exercise the privileges of their certificates in disregard of the regulations lack the care, judgment and responsibility required of certificate holders. Respondent's repeated, intentional disregard of regulatory requirements that had been explained to him unequivocally placed his compliance disposition in issue in this proceeding.

Id. at 388.

⁹In a case recently decided by the Board, SE-11267, respondent received a 150-day suspension for violating FAR §§ 61.3(a) and 91.9.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The Administrator's appeal is granted; and
3. The 90-day suspension of respondent's airman certificate shall begin 30 days after service of this order.¹⁰

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

¹⁰For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to FAR § 61.19(f).